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Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to Cuba

Note by the Secretariat

In her report, submitted pursuant to Human Rights Council resolution 35/5, the Special Rapporteur on trafficking in persons, especially women and children highlights the commitment of Cuba to combating trafficking in persons, as evidenced by, inter alia, its recently established national action plan for preventing and combating trafficking in persons and for the protection of victims, a soon-to-be-established interministerial body for coordination of anti-trafficking actions; victims' access to legal remedies, including compensation, through the indemnity fund for victims of crimes; the country's free and universal education and health-care systems; and social services that reduce vulnerabilities to trafficking.

The Special Rapporteur nonetheless expresses concern about — among other things — the lack of a clear legal definition of trafficking, and the conflation of procuring and trafficking in the penal code, which hampers a correct perception of the features of trafficking among government officials and civil society organizations. Trafficking is still perceived as a crime related to sexual exploitation, while the labour dimension of trafficking is overlooked. Other challenges include identification of victims being carried out on only a limited scale, low levels of prosecution of cases of trafficking, and inadequate legal and institutional protection frameworks for victims. Although prostitution is not a crime per se, individuals who engage in prostitution/sex work are placed in "rehabilitation centres", without freedom of movement, which is in contrast with the rule of law and violates the rights of possible victims of trafficking.

The Special Rapporteur's recommendations to the Government include the ratification of key international legal instruments, and strengthening of national legislation and policies to protect the rights of trafficking victims, including through the revision of existing penal laws.

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Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to Cuba*

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* Circulated in the language of submission and Spanish only.

I. Introduction

1. The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, visited Cuba from 10 to 14 April 2017, at the invitation of the Government. The objectives of the visit, which included meetings in Havana, Matanzas and Artemisa, was to examine the prevalent forms of trafficking in persons and to assess the effectiveness of measures taken by the Government to prevent and combat trafficking and protect the human rights of trafficked persons.

2. Ms. Giammarinaro expresses her sincere gratitude to the Government for the invitation, as well as for the full cooperation extended to her prior to and during her visit — the first such visit by a special procedure mandate holder of the Human Rights Council in the past 10 years.

3. During her visit, the Special Rapporteur met with representatives from the Ministry of Education, the Ministry of the Interior, the Ministry of External Relations, the Ministry of Justice, the Ministry of Tourism, the Ministry of Labour and Social Security and the Ministry of Public Health, as well as with the president, and members, of the National Assembly. She also visited the Julio Antonio Mella urban secondary school, the diagnostic and orientation centre, the House for Women and Families, a centre for the protection of boys, girls and adolescents, the National Centre for Sex Education, the Central Unit for Medical Collaboration, and the Hotel Meliá in Varadero. She also exchanged views with civil society organizations working on the issue of human trafficking and related matters, and with representatives of United Nations agencies and programmes. She is grateful to the resilient survivors who courageously shared their experiences in the hope of preventing future trafficking in persons.

II. Main findings

A. Forms and manifestations of trafficking in persons

4. Available data indicate that Cuba is a source country and to some extent a transit country for trafficking in persons. Victims of internal trafficking in Cuba are women, girls and boys who are subjected to trafficking for sexual exploitation by family members or close relatives.

5. As a source country for trafficking, Cuban girls and women are trafficked for labour and sexual exploitation through deceptive promises or advertisements of employment in the entertainment industry, usually via the Internet or mobile phones outside Cuba, that then turn into forced prostitution. Traffickers are usually Cuban family members, partners or acquaintances who work with foreign counterparts in the countries of destination.

6. Cubans attempting to reach the United States of America through Central and South American States such as Colombia, Ecuador, Mexico and Panama are likely to be trafficked while en route by those who abuse their vulnerability and exploit them sexually or for labour (see paras. 16 and 17 below). There are also transnational cases of trafficking for sexual exploitation from Angola, China and Turkey, and to a lesser extent from Belgium, Equatorial Guinea, Guyana, Spain, Suriname and the United Kingdom of Great Britain and Northern Ireland.[1]

7. Cuba also faces challenges as a transit country for trafficked persons. Migrants from as far away as Africa and Asia, in search of alternative routes to the United States, can be found in the country. While they initiated their migration freely, some may find themselves in situations akin to trafficking when they are compelled into labour exploitation or sexual

[1] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las victimas" (2016), p. 21.

exploitation while en route in order to repay their travel-related debts or when they accept deceitful promises or solutions that result in exploitation.

8. The root causes of trafficking include limited economic opportunities, particularly outside the capital. Clearly, the flourishing tourism that involves many Cubans is a promising trend and an opportunity for economic development, in particular for self-employment (i.e. for *cuentapropistas*).

9. However, in the tourism sector especially, demand for commercial sexual services could emerge as an underlying factor contributing to trafficking in women and children for sexual exploitation. Within this sector, the possibility of trafficking for labour exploitation cannot be ruled out either, especially in regard to the emerging non-State businesses operating in the tourism sector.

10. The economic, commercial and financial embargo imposed by the United States of America against Cuba for over half a century has a negative impact on efforts by Cuba to prevent and address trafficking. The embargo is consistently condemned by Cuba and the international community for violating international law. The General Assembly, through its annual resolutions, calls for the economic, commercial and financial embargo imposed by the United States of America against Cuba to be ended (see Assembly resolution 72/4, as well as A/72/94). The Inter-American Commission on Human Rights rejects the continuation of the economic sanction because of its disproportionate and indiscriminate impact on the general population, and has repeatedly called on the United States Congress to lift it.[2] The Special Rapporteur on trafficking in persons, especially women and children acknowledges that the embargo has not improved human rights in the country; on the contrary, it has a negative impact on social and economic rights of Cubans and should be lifted. The consequences of the embargo — which imposes indiscriminate hardship on the population — exacerbate the vulnerabilities of both Cubans and migrants in transit in the country, and therefore increase the risk of an expansion in the trafficking of persons.

11. Given the scarce available data on trafficking in persons, the Special Rapporteur found it difficult to assess the exact scope and magnitude of trafficking in persons, especially women and children, in the country. Anti-trafficking work is at its initial stages, as are the legal and institutional protection frameworks for victims of trafficking. This reinforces the problem's invisibility; the extent, trends and manifestations are therefore unknown.

B. Trafficking of girls, boys and women for sexual exploitation

12. Identified cases of internal trafficking reveal that victims of trafficking in Cuba are girls, boys and women who are, for the most part, subjected to trafficking for the purposes of sexual exploitation. According to official sources, children (both boys and girls) as young as 10 are forced by family members or close relatives to have sexual relations with foreigners and Cubans in order to sustain the family financially.[3] Moreover, adult women are forced into prostitution/sex work and commercial sexual exploitation by their partners, who use means such as threats, force, abuse of power, and control of their earnings.[4] In some instances, these women are trafficked by their partners from their home towns to work in Havana. The Special Rapporteur cautions that in view of the burgeoning tourism industry, the probability of trafficking for sexual exploitation, including that involving children, is likely to increase if the issue is not properly addressed by the authorities.

13. Cuba is also a source country for sex trafficking of women and girls. In this regard, the Special Rapporteur received first-hand information about a case involving the trafficking of a Cuban woman out of the country. The case involved a 23-year-old woman

[2] Inter-American Commission on Human Rights, report on Cuba (2016), available at www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap.B.Cuba-en.pdf.

[3] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015 and 2013), available at www.minrex.gob.cu/en/cubas-report-legal-and-punitive-actions-against-trafficking-persons-and-other-forms-related-sexual and www.minrex.gob.cu/es/node/30706.

[4] Ibid.

who had taken up an offer of employment from a Cuban woman, to work as a hostess in a club in Angola, only to find herself in a situation of forced prostitution to repay the travel, visa and accommodation expenses covered by the Cuban trafficker and her Angolan counterparts. Her passport had been confiscated and she had been unable to travel until she managed to repay her debt and a hefty commission to the club from her earnings. Similarly, 21 Cuban women had been trafficked for sexual exploitation to Turkey, after having entered into deceitful employment contracts in Cuba.[5]

14. So far, trafficking for purposes of sexual exploitation has mainly occurred within the close family or couple context, but it can also be carried out by organized groups of criminals, especially in destination countries.

2. Trafficking for labour exploitation and sexual exploitation

15. The extent of trafficking for labour exploitation, including of children, is not known. Available information indicates that young people are trafficked out of Cuba for labour exploitation through promises of employment as waiters, dancers or manicurists by traffickers who arrange for their travel, migration and employment contracts.[6]

16. The Special Rapporteur has heard first-hand accounts of young, educated Cuban girls trafficked — by Cubans and foreigners — to China and Turkey on the basis of deceptive promises of employment in the entertainment industry. Once in the destination country, they found that their employment conditions were slavery-like, with long hours and no salaries until they repaid the travel, food and accommodation expenses owed to their traffickers. Their passports were taken away to prevent them from fleeing, and some became irregular migrants as a result of non-renewal of their residence or work permits. This, along with language barriers, prevented them from seeking help from local authorities. Besides exploiting them at work, the traffickers eventually forced them into prostitution. Upon their return to Cuba, some victims become traffickers themselves, thus perpetuating the cycle of trafficking.[7]

17. Moreover, Cubans migrate to South and Central American countries, mostly in order to reach the United States where — until it was discontinued in January 2017 — they benefited from a "wet foot, dry foot" policy that granted permanent residence to those who arrived via a port of entry, even without a visa.[8] In this regard, 56,406 Cubans entered the United States in 2016, up by 31 per cent from 2015 and by 78 per cent from 2014,[9] following the lifting of travel restrictions by the Government of Cuba in 2016 and the announcement of the renewal of ties between the two countries. There is information that Cubans attempting to reach the United States through Colombia, Ecuador, Mexico or Panama are likely to be trafficked by those who exploit their vulnerability while en route. For instance, in August 2016, more than 1,000 Cuban migrants were reportedly stranded in Colombia, close to the border with Panama, and were at risk of being trafficked by people who exploit their precarious situation and their need to continue their journey. In July of the same year, 121 Cuban migrants were allegedly deported from Ecuador without proper notification or the opportunity to appeal against the decisions.[10] In such cases, it is not

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[5] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las víctimas" (2016).

[6] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015), p. 19.

[7] Ibid., p. 20.

[8] White House, Office of the Press Secretary, statement by the President on Cuban immigration policy (January 2017), available at https://obamawhitehouse.archives.gov/ the-press-office/2017/01/12/statement-president-cuban-immigration-policy.

[9] Pew Research Center, "Surge in Cuban immigration to United States continued through 2016" (January 2017), available at www.pewresearch.org/fact-tank/2017/01/13/cuban-immigration-to-u-s-surges-as-relations-warm/.

[10] Inter-American Commission on Human Rights, "IACHR deeply concerned about the situation of migrants in Colombia close to the Panama border" (August 2016), available at www.oas.org/en/iachr/media_center/preleases/2016/112.asp.

uncommon that some may become potential victims of trafficking, both for labour exploitation and sexual exploitation.

18. In addition, there are indications that Cuba is a transit country for trafficked persons. Migrants from as far away as Africa and Asia in search of alternative routes to the United States have been found in the country. Although they initiated their migration freely, some may find themselves in situations akin to trafficking en route to their destination.

3. Trafficking for labour exploitation

19. Information about internal trafficking for labour exploitation purposes was not available. With the recent economic changes that allow for self-employment and for the development of small businesses in some sectors, the State-owned tourism sector has also opened up to non-State businesses to meet the increased demand for tourism, particularly through the opening and managing of restaurants (*paladares*), private room rental (*casas particulares*), and self-employment (*trabajadores cuentapropistas*) serving the industry, such as private construction companies and taxi drivers. While these changes constitute a great opportunity for economic development, attention should be paid to preventing labour exploitation that may amount to trafficking, particularly in the tourist industry which is affected globally by both labour exploitation and sexual exploitation.

20. Moreover, Cuba provides skilled labour, especially in the areas of health, education and sport, to other countries. According to the Government, participation in such programmes is voluntary and based on a contract outlining the wages, benefits, and working and living conditions. Those conditions, which also include a contribution of part of their wages to supporting the development of the health-care system in Cuba, can be accepted or rejected by the participants prior to their departure.

21. While acknowledging the value of such programmes, the Special Rapporteur however learned of allegations where "although the workers voluntarily accept to be part of these programmes and to leave Cuba, once they arrive in their country of destination the voluntary nature of this agreement ends in so far as their freedom of movement is restricted, given that their passports or identity documents are withheld; they cannot choose their place of residence or refuse conditions of work, and they are only paid a very small portion of the wage agreed upon by the governments who are parties to the cooperation agreement".[11] The Special Rapporteur encourages the Government to be aware of human rights violations linked to the withholding of wages and to restrictions on freedom of movement, in order to prevent these unintended effects from materializing.

B. Legal, policy and institutional frameworks for combating trafficking in persons

1. Legal framework

(a) International legal framework

22. At the international level, Cuba is party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and to a number of international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child and its Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. It has also ratified the International Labour Organization (ILO) Abolition of Forced Labour Convention, 1957 (No. 105), the

[11] International Labour Organization Committee of Experts on the Application of Conventions and Recommendations, Direct Request on Forced Labour Convention, 1930 (No. 29) — adopted 2014, published 104th ILC session (2015), available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3187939.

ILO Forced Labour Convention, 1930 (No. 29), and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

23. Regrettably, the country is yet to ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Protocol of 2014 to the ILO Forced Labour Convention, 1930 (No. 29), the ILO Domestic Workers Convention, 2011 (No. 189), and the Convention relating to the Status of Refugees, of 1951, and the 1967 Protocol thereto. Nevertheless, Cuba has a de facto policy of non-refoulement for refugees recognized by the Office of the United Nations High Commissioner for Refugees (UNHCR).

(b) Domestic legal framework

24. Procuring and pimping, and trafficking in persons, are prohibited under article 302 of the Criminal Code. A person who induces, promotes or enables the prostitution or sexual trade of others, or who manages a sexual establishment, or who gains benefits from the prostitution of others is sentenced to between 4 and 10 years of imprisonment.

25. The sentence may be prolonged to up to 20 years of imprisonment if the trafficker works in health, law and order, education, tourism, youth guidance or the combating of prostitution, or if threats, blackmail, coercion or abuse of authority have been used, or if the victim is a disabled person in the care of the perpetrator (art. 302.2).

26. The sentence may be extended to up to 30 years in cases where the trafficking includes organization or incitation for the purposes of prostitution or other forms of sex trade, where the perpetrator is a repeat offender, or where cross-border movement is involved (art. 302.3).

27. Other punishable offences that may amount to trafficking and other forms of exploitation include: sale of children, illegal adoption and trafficking of a child under the age of 16 in exchange for recompense or payment, punished by 2 to 15 years of imprisonment if the purpose is corruption, pornography, prostitution, sale of human organs, forced labour or illegal activities (art. 316); corruption of minors under the age of 16 for forced prostitution, punishable by imprisonment of up to 15 years, or 30 years in the case of use of violence for instance (art. 310); rape, with the punishment ranging from four years' imprisonment to the death sentence (art. 298.1); paedophilia with violence, punishable by 7 to 30 years' imprisonment (art. 299.1), lascivious abuse, punishable by six months' to five years' imprisonment (art. 300.1); sexual assault, punishable by three months' imprisonment and/or a fine (art. 303.1); rape of a child aged 12 to 16 years, punishable by three months' to one year's imprisonment (art. 305.1); and any other act that is against the normal development of minors, punishable by three months' to one year's imprisonment and/or a fine (art. 315).

28. Moreover, confiscation of properties and assets (arts. 302.4 and 302.5), and suspension or temporary loss of parental rights, are also provided for as ancillary punishments, as is the prohibition on exercising professions, positions or trades when the act of the perpetrator was committed while he was carrying out such profession, position or trade.

29. The labour framework in Cuba consists of the Constitution, the Labour Code (Law No. 116/2013), the Labour Code Regulations (Decree No. 326/2014), and several ministerial resolutions that set out minimum labour protection standards, including working hours, paid leave and regular payment of wages. Guarantees for female workers, exceptional arrangements for the labour of children aged between 15 and 18 years, and guaranteeing the protection of workers, including via a social security system, are also provided for.

30. With regard to migration, Decree 217/1997 regulates internal migration, with strict requirements for permanently relocating to the city of Havana from other parts of the country. This was subsequently amended by Decree 293/2011, which exempted certain persons, such as close family members of those already in the capital, from being obliged to go through the authorization procedures. Moreover, on the basis of the Law on Foreigners

(Law 131/1979) and Decree 27/1978, the Cuban authorities can transfer or expel foreigners it deems undesirable from its territory, who have engaged in criminal activities which involve children or have exploited people or trafficked them.[12]

31. The legal framework for the donation of organs and tissues of living donors is regulated by Resolution 857/2015 of the Ministry of Public Health.

32. In spite of these laws, the Special Rapporteur is concerned at the absence of an adequate legal framework to prevent and combat trafficking in persons that is in conformity with the Trafficking in Persons Protocol — especially the definitions in its article 3. Consequently, trafficking in persons, especially women and children, is not comprehensively addressed in the legal framework. More specifically, the crimes of procuring and trafficking are conflated in the penal code and trafficking in all its forms is neither defined nor recognized. In addition, protection of children against sexually motivated crimes is only provided until the age of 16. Moreover, by focusing exclusively on trafficking for sexual exploitation, the existing legislation excludes other forms of exploitation, such as trafficking for the purpose of labour exploitation.

2. Policy framework

33. A national action plan for preventing and combating trafficking in persons and for the protection of victims (for 2017–2020) (hereinafter referred to as the National Action Plan) was adopted by the Council of State in February 2017. It sets out a "zero tolerance" policy foundation for the country's anti-trafficking work. It focuses on prevention of trafficking, protection of victims and prosecution of traffickers, through its human rights approach, gender focus, primacy of the best interest of the child, and involvement of victims, and the cooperation and participation of different stakeholders.

34. Under the National Action Plan, the country seeks the revision of its legal framework on trafficking; the reinforcement of its identification mechanism; the establishment of protection mechanisms for victims, in cooperation with relevant national stakeholders; and the prosecution of perpetrators. It plans to build the capacity of stakeholders, to raise the awareness of the population at large, and to promote international cooperation with regard to preventing and combating trafficking in persons.

35. The Special Rapporteur notes the political will of the Government to combat trafficking and the involvement of relevant government offices and some civil society organizations in the implementation of the National Action Plan. The Government's efforts in adopting a participatory approach when developing the National Action Plan, which included the establishment of a multisectoral, interinstitutional and multidisciplinary group with representatives of numerous organizations and institutions, coordinated by the Ministry of Foreign Affairs, is also encouraging.

3. Institutional framework

36. At the time of the Special Rapporteur's visit to Cuba, an interministerial body to combat trafficking was not yet established, which rendered the country's anti-trafficking action incoherent and uncoordinated within and across the authorities concerned, service providers, and some civil society organizations. The establishment of such a body is, however, addressed in the National Action Plan for 2017–2020 to better coordinate the anti-trafficking work in coordination with State institutions, including the Ministries of Justice, Public Health, Education, Foreign Affairs, Labour and Social Security, Culture, and Tourism, as well as with civil society organizations and communities.[13] Under this framework, the Ministry of Justice will coordinate actions involving an international component, while bilateral dialogues and cooperation processes and the work of United Nations human rights bodies will continue to be coordinated by the Ministry of Foreign Affairs.[14]

[12] María Caridad Bertot Yero, "La trata de personas en la legislación penal cubana".

[13] National Action Plan, pp. 6–8.

[14] Ibid., p. 7.

37. In the meantime, the country's anti-trafficking efforts are undertaken by various bodies, including the Ministry of Justice, which, among other things, is responsible for criminal prosecution in trafficking cases, the registration of births, and the issuance of birth certificates in collaboration with the Ministry of Public Health.[15] The Ministry of Public Health, through its national organization for transplants, oversees and monitors organ transplants in order to prevent trafficking for the purposes of removal of organs.[16] It also ensures that free health care is available to all, including trafficked persons.[17]

38. Additionally, the Ministry of the Interior, through its General Division for Criminal Investigations and Operations and its General Division of the National Revolutionary Police, investigates trafficking cases and crimes associated with transnational crimes in Cuba. Moreover, the Attorney General's Office, through its family protection and jurisdictional issues directorate, provides specialized attention for children and adolescents, especially those who are victims of crimes and violence.[18]

39. The Ministry of Labour and Social Security provides guidance on, and monitors and coordinates, actions related to preventing trafficking in persons and to social assistance for trafficked persons. It also provides training programmes for its personnel. Administrative councils of the provincial and municipal People's Power, and the provincial and municipal labour bureaux, are also involved in this prevention, assistance and social work. At the municipal level, the social work unit organizes and monitors the work of the social workers — whose work covers the entire population.[19]

40. Within the Ministry of Tourism, the Office of Security and Protection specifically focuses on preventing Cuba being depicted as a sex tourism destination.[20] The Ministry of Education addresses child trafficking through, inter alia, its prevention and protection actions and also contributes to combating illegal adoption.

41. While these institutions play positive roles in combating trafficking in persons in Cuba, the absence of a specific multisectoral structure with adequate human and financial resources, as well as defined responsibilities to address the phenomenon in a coordinated manner, has been a challenge, which the Special Rapporteur hopes will be remedied with the establishment of the structure envisaged in the National Action Plan.

C. Identification of trafficked persons

42. Victims of trafficking are primarily identified by the police, social workers and health officials. According to information received, identified cases are limited to trafficking for sexual exploitation of women, child prostitution and sexual abuse of minors.[21]

43. Labour inspectors of the National Labour Inspection Bureau, within the Ministry of Labour and Social Security, monitor State and non-State labour entities' compliance with labour legislation and requirements for safety and protection at work.[22] Inspectors, including those trained to detect cases of labour trafficking, can order the cessation of the causes or effects of violations, close down and/or stop equipment, and shut down premises considered to be dangerous for the safety and health of workers or that of the population and impose fines on Cuban and foreign juridical and natural persons in the non-State sector.

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[15] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

[16] Ministry of Public Health resolutions 46/2015, 857/2015 and 223/2014.

[17] See CEDAW/C/CUB/5-6, para. 472.

[18] Attorney General's resolution 33/2016.

[19] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

[20] Meeting with the Minister of Tourism, Manuel Marrero Cruz, April 2017.

[21] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015 and 2013).

[22] National Action Plan, p. 5; and Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

In spite of this, labour inspections conducted in 2,005 entities in the country, in 2016 and the first quarter of 2017, resulted in the detection of 9,364 labour violations, including 14 cases involving children under 18; however no case of trafficking for the purpose of labour exploitation, including forced labour of children, was detected.[23] In addition, in 2016, the *Oficina de Atención a la Población* received 67 labour-related complaints and 56 requests, though none related to trafficking in persons for the purpose of labour exploitation.[24]

44. Public complaints on a number of issues, including trafficking in persons, can be received via the telephone line run by the Prosecutor General's Office and the Federation of Cuban Women. In 2016, out of the 17,925 complaints received, all pertained to violations of children's rights by family members, and no complaints related to trafficking were detected.[25] The Special Rapporteur notes the importance of this tool — which is operational 24 hours a day in Spanish — to identify victims of trafficking, though actual cases of trafficking had not been reported or identified through the tool.

45. The Federation of Cuban Women, a national organization with consultative status with the Economic and Social Council, that among other things works in the areas of gender, education and health, also identifies potential victims of trafficking through its programmes and the actions undertaken by its 50,000 regularly trained voluntary social workers, who provide services to the community and at 173 centres that give guidance to women and families (*casas de orientación a la mujer y la familia*), together with 15 specialists in social work and 114 professional technicians covering the entire country.[26]

46. Moreover, under the country's extensive social system, health professionals, social workers, educators and those working in the tourism sector are also well placed to identify trafficking and risks of trafficking within the country, if they receive more capacity-building and guidance.

47. The Special Rapporteur observes that the very low incidence of identified victims may not be indicative of the true extent of the problem of trafficking in the country. Identification of trafficked persons is hindered by the absence of a clear legal definition of trafficking that encompasses all forms of trafficking, as per article 3 of the Trafficking in Persons Protocol, as noted above.

48. Other challenges contributing to the low identification rate include the absence of standard tools and protocols for the detection of trafficked persons that can be used by all. Moreover, the capacity gap on the part of front-line officers, including police and border officials, public prosecutors and judges, to quickly and accurately identify cases of trafficking and potential trafficking is another challenge, despite the Government's ongoing efforts to further address this via training programmes. As a result, victims of trafficking, including in the migrant population transiting through Cuba, remain unidentified or are misidentified as victims of other crimes.

D. Protection of trafficked persons

49. Once identified, trafficked persons should be provided with appropriate care and assistance to enable them to recover and to obtain protection from further exploitation and harm. Such support should not be made conditional on cooperation with criminal justice authorities.[27]

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[23] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las víctimas" (2015), p. 15.

[24] Ibid.

[25] Ibid., p. 9.

[26] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

[27] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Human rights and human trafficking", p. 14.

1. Non-criminalization of trafficked persons

50. The trafficking cycle cannot be broken without respect for the rights of trafficked persons and in a non-discriminatory manner. In this regard, the Cuban legal framework does not provide victims of trafficking with specific protection from further harm, or provide them with assistance in achieving full recovery. Nor does it confer upon victims of trafficking a special status that would exempt them from prosecution for offences committed in relation to their status as trafficked persons. Nevertheless, in practice, identified victims of trafficking have benefited from exemption from criminal prosecution and have been allowed to return to Cuba even when immigration laws have been infringed.

51. Individuals who engage in prostitution/sex work, including children between the ages of 16 and 18 years, are detained in "rehabilitation centres" where they are subject to restriction of movement. They can be sentenced by courts to up to four years' confinement in such centres, where they are required to work, mostly in the agricultural or horticultural sector.[28] It is not ruled out that there may be possible victims of trafficking among these women and children.

52. The Special Rapporteur is highly concerned that although prostitution is not a crime in and of itself in Cuba, people engaging in prostitution/sex work are actually punished in the same manner as those who commit crimes against the norms of morality, such as antisocial behaviour and causing disturbance to the community which can lead to the imposition of pre-criminal measures including re-education for periods of up to four years.[29] Such measures are based on subjective perceptions and are inconsistent with the rule of law. They also constitute an impediment to the identification of — and to assistance and protection for — possible victims of trafficking for sexual exploitation from among those engaged in prostitution/sex work, who are stigmatized and unduly detained even when no crime has been perpetrated. Therefore, the detention of people engaging in prostitution in "rehabilitation centres" should be abolished without delay.

2. Shelters

53. Cuba guarantees universal and free health care, education and social assistance for all its population, including for victims and potential victims of trafficking.

54. The Federation of Cuban Women, through its 15 guidance centres for women and families (*casas de orientación a la mujer y la familia*), assists victims of violence, including those of sexual violence. Among other things, these centres provide services such as health care, mental health and substance abuse treatment, skills training, and assistance in finding employment. A social worker guides and accompanies the victims throughout their recovery process. In 2016, 600,000 persons, of whom 25 per cent were men, were assisted by the centres. Of these, 600 were victims of violence.[30] However, no victim of trafficking has yet benefited from these shelters.

55. Moreover, the Special Rapporteur is concerned that trafficked persons, particularly boys, girls and victims of labour exploitation, may be falling through the protection gap, in the absence of shelters specifically designed to accommodate and provide protection to them. In the long term, the existing shelters may be inadequate to accommodate trafficked persons, whose circumstances and needs are different from those of other victims of violence.

E. Investigation, prosecution and punishment

56. Investigations for offences of trafficking in persons, procuring, pornography and other forms of sexual abuse of adults, minors and foreigners is undertaken by the technical investigation police (*Policía Técnica de Investigaciones*) of the General Division of the

[28] See E/CN.4/2000/68/Add.2, para. 52.

[29] Law No. 62, arts. 72–74.

[30] Meeting with the Secretary-General of the Federation of Cuban Women, Teresa Amarelle Boué, April 2017.

National Revolutionary Police. The General Bureau for Criminal Investigation and Operations, through its specialized bodies, also investigates these cases and prosecutes perpetrators. Moreover, a special tourism team investigates suspicious transactions and antisocial behaviour involving tourists and residents on the beach, and the INTERPOL National Central Bureau assists local police forces in investigations that require international outreach.

57. Cases of minors who are victims of crime, including victims of trafficking, are investigated by the Minors Division of the Ministry of the Interior, through its three centres for the protection of girls, boys and adolescents located in Havana, Santiago de Cuba and Santa Clara. In these centres, qualified multidisciplinary teams prevent the revictimization of children under 16 years of age who have been victims of sexual offences, by ensuring their participation and appropriate treatment in legal proceedings and by taking into consideration their best interests, in a manner consistent with their evolving capacities. Audio and video recordings that are admissible in court are also used. The physical and/or psychological damage, the possible repercussions on the victim, and the treatment or follow-up actions from the medical, psychological, psychiatric, educational, family or social points of view are also determined. The Special Rapporteur notes with appreciation this interinstitutional coordination between law enforcement, public health and education agencies.

58. During 2015, the centres for the protection of girls, boys and adolescents and alternative centres in the provinces provided protection for 2,174 boys and girls presumed to be victims of sexual abuse.[31] In 2016, they provided protection for 888,000 children.[32] Of these, only 18 cases related to corruption of minors for the purposes of exploitation, particularly sexual exploitation.[33]

59. With regard to the prosecution of cases of trafficking in persons, especially women and children, 21 cases of trafficking were tried in 2016; one involved trafficking for forced begging, while 20 involved trafficking for sexual exploitation. Of these, four cases involved pimping and procuring and trafficking, and 17 cases related to corruption of minors.[34] The age of the youngest victim was 7 years, and the convictions ranged from 5 to 25 years' imprisonment. In 2015, 52 cases were tried for the crimes of procuring and trafficking in persons and 90 cases were tried for the crime of corruption of minors.[35] Of those, 17 convictions, with sentences ranging from 5 to 15 years' imprisonment, were handed down in 10 cases which had some elements of trafficking for sexual exploitation, including of minors.[36] Those cases included enforced prostitution of Cuban women and girls as young as 10 to foreign and Cuban men, by family members or partners. In 2013, out of 144 cases that were prosecuted for corruption of minors and procurement, 13 cases had some elements of trafficking for sexual exploitation, including of minors, and 14 convictions with sentences ranging from 4 to 14 years' imprisonment were handed down to perpetrators — predominantly Cuban men.[37]

60. The Special Rapporteur acknowledges the safeguards in the legal framework to protect child victims of crimes, including by ensuring their privacy, especially in trials involving cases of child abuse and other crimes characteristic of trafficking, as per instruction 173/2003 of the Governing Council of the People's Supreme Court. She also

[31] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

[32] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las victimas" (2017), p. 21, available at http://www.minrex.gob.cu/sites/default/files/ficheros/informe_de_cuba_sobre_prevencion_y_enfrentamiento_trata_de_personas_y_proteccion_a_victimas_2017.pdf.

[33] Ibid.

[34] Ibid., pp. 25–30.

[35] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

[36] Ibid., pp. 16–18.

[37] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2013).

notes the role of the centres for the protection of girls, boys and adolescents in accompanying children to trial in the exceptional cases where they are subpoenaed to court. The collaboration and cooperation between law enforcement and health practitioners for the well-being of children is also commendable. Moreover, it is worth noting the composition of Cuban courts — where more than 70 per cent of judges and prosecutors are women,[38] and which have lay judges who are from worker collectives, or whose background is from community organizations or civil society organizations, who serve on a par with professional judges, for a period of five years[39] — a further safeguard for the protection of children. While this may work for Cuba, given the high level of education, further training about trafficking for lay judges is still needed in order for them to be able to handle the crime of trafficking.

61. In spite of such positive developments, it is worrying that cases of labour trafficking are yet to be identified, investigated and prosecuted — indicating that in Cuba, the fight against trafficking in persons is mostly focused on sexual exploitation. Moreover, the Special Rapporteur cautions that the legal understanding of trafficking seems to be based on the perception of cases where extreme acts and means of coercion are used. This disregards forms of trafficking that are subtler yet still abusive. Overall, the limited capacity of law enforcement agencies and judicial authorities to identify all forms of trafficking, especially those involving women and children, on the basis of existing national anti-trafficking laws, hampers the investigation and prosecution of all forms of trafficking in persons.

F. Redress for victims of trafficking

62. According to international law and standards, States are obliged to provide victims of trafficking with access to effective remedies.[40] These include restitution, recovery and rehabilitation, satisfaction and guarantee of non-repetition, as well as access to information and legal assistance, and regularization of residency status.[41]

63. In Cuba, the remedies for victims of trafficking provided by law include confiscation of the trafficker's assets, the suspension of paternal rights in cases where the victim is a descendant of the trafficker, and a prohibition on working in their usual profession for those who are found to have engaged in trafficking.[42]

64. An indemnity fund, containing the earnings of prisoners, money from fines and other contributions from the Government, awards compensation to victims of crimes following criminal proceedings. The compensation is available to all victims, including victims of trafficking, regardless of the solvency of the prosecuted offender.[43] It is not clear, however, whether the fund has been used to support victims of trafficking.

65. In certain circumstances, permanent or temporary residence in itself may be a necessary and appropriate form of remedy. Where trafficking risks exist, the Special Rapporteur is of the view that identified trafficked persons from among the migrant population should be provided with the opportunity to remain in Cuba on a temporary or permanent basis and provided with appropriate support to be integrated effectively into Cuban society.

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[38] See www.granma.cu/cuba/2017-07-20/empoderar-a-mujeres-y-ninas-reduce-sus-vulnerabilidades-20-07-2017-23-07-11.

[39] The Constitution, in its article 124, provides — in regard to the administration of justice — that all courts operate in a collegiate manner and both professional and lay judges participate in them with equal rights and obligations.

[40] Trafficking in Persons Protocol, art. 6, para. 6; and OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, guideline 9.

[41] See A/HRC/17/35.

[42] National Action Plan, p. 4.

[43] Bruce R. Jacob, "Reparation or restitution by the criminal offender to his victim: applicability of an ancient concept in the modern correctional process" (1965), *Journal of Criminal Law and Criminology*, p. 155, available at http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5650&context=jclc.

G. Repatriation and reintegration

66. Repatriation of victims of trafficking in persons is provided for in the Trafficking in Persons Protocol.[44] At the time of the Special Rapporteur's visit, Cuba did not have a standard repatriation and reintegration procedure specifically designed for identified victims of trafficking. The voluntary repatriation of stranded migrants in Cuba is facilitated by the Government in cooperation with the International Organization for Migration,[45] while recognized refugees are resettled by UNHCR. The Special Rapporteur cautions that if inadequately screened, potential victims of trafficking from among migrants and recognized refugees set to be repatriated could be put at serious risk of being retrafficked or of severe violations of their human rights in their country of origin.

67. Upon their voluntary return from abroad, Cuban survivors of trafficking whom the Special Rapporteur met indicated that they had benefited from free health care and educational and training opportunities to enable them to reintegrate into society and continue their lives.

68. While the National Action Plan does not specifically provide for voluntary, safe and dignified return and reintegration options for all victims of trafficking, the Special Rapporteur hopes that, based on existing practice, procedural safeguards will be established to provide for a recovery and reflection period, alternatives to repatriation to their countries of origin, and the carrying out of risk assessments to ensure that their repatriation will not jeopardize their safety and security.

H. Prevention

69. The Special Rapporteur welcomes the Government's strong focus on prevention of trafficking through a multidimensional approach.

70. The universal education system of Cuba contributes to the prevention of trafficking of students from preschool to tertiary education levels through sexual and civic education programmes, as well as different after school programmes such as the ones she was briefed on by students and teachers during her visit to the Julio Antonio Mella secondary school in Havana. The Special Rapporteur learned that teachers endeavoured to pay attention to the situation of all children, including those in vulnerable situations such as orphans, children whose parents are incarcerated, and children with mental health problems and their families. They received regular training on a number of topics, including prevention of violence which also addresses trafficking in persons.[46] In April 2017 for instance, the topic of trafficking in persons was addressed at a national workshop to prepare for the 2017/18 school year.[47] The Special Rapporteur was also informed that guidance material was being developed to address the specific crime of trafficking and how to combat it, in cooperation with teachers, students and the family.

71. The Ministry of Public Health holds periodic meetings on gender-based violence, prostitution, sex tourism and trafficking in persons to enable health professionals to identify challenges and steps forward.[48] Likewise, training is provided on delivering a health-based response to situations of sexual violence that may be linked to trafficking in persons. In 2015, a protocol on addressing the situation of victims of sexual abuse which includes preventative actions to minimize the phenomenon and deal with the victims individually was designed. Thus, health-care professionals have an important role in preventing and

[44] Trafficking in Persons Protocol, art. 8.

[45] International Organization for Migration, overview on Cuba, available at https://www.iom.int/countries/cuba.

[46] Ministry of Education, "Labor de Ministerio de Educación para la prevención de la trata de personas", (2017), p. 3.

[47] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las víctimas" (2017), p. 12.

[48] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

identifying trafficking, given that access to physical and mental health services is freely available to all Cubans, including victims and potential victims of trafficking. Similarly, health workers undertaking missions outside Cuba, who receive training on various topics, including trafficking in persons, also have the opportunity to engage in prevention of trafficking through awareness-raising campaigns and identification of potential victims.[49]

72. The Ministry of the Interior also gives training on prevention, protection and follow-up, concerning child victims of sexual abuse. Between 2013 and 2015, it provided training sessions on prevention and detection of sexual exploitation of children to officials of the Prosecutor General's Office, courts, and the public health system (physicians, psychiatrists and paediatricians) and to members of the Federation of Cuban Women.[50] Moreover, two nationally broadcast video lectures on the protection of victims and measures against the perpetrators, convened in 2015 by the Prosecutor General's Office and the Minors Division, were attended by some 600 officials including public prosecutors, and specialized investigators from the directorate general for criminal investigation and operations (Dirección General de Investigación Criminal y Operaciones) and the General Division of the National Revolutionary Police. The General Division, together with the National Centre for Sex Education, also held four regional training sessions for police officers on gender-based violence and exploitation, and lesbian, gay, bisexual, transgender and intersex rights and protection. They also provided a postgraduate course on prevention of child sexual abuse. Moreover, officers of the Ministry of the Interior attend various international and regional events related to prevention and to the protection of children from crimes and abuses.[51]

73. Within the Ministry of Tourism, the Office of Security and Protection promotes safe tourism by monitoring Cuba's image as a tourist destination, by combating sex tourism and by addressing the demand for commercial sex. In 2016 it detected seven such cases, following checks on 78 tourist facilities.[52] It also trained law enforcement officials, assigned to the tourism sector, on trafficking indicators.[53] In 2015, as part of actions for the prevention of trafficking, especially trafficking of a sexual nature, the Federation of Cuban Women held educational meetings to address procurement of sexual services, for 729 families authorized to rent rooms to tourists and for workers at 134 nightclubs throughout Cuba.[54]

74. The Ministry of Labour and Social Security also provides its social workers with training to prevent and address a range of social problems. However, data on training for labour inspectors to screen for indicators of potential trafficking for labour exploitation was not available.

75. Public awareness of trafficking in persons is a key prevention strategy appropriately targeting trafficked persons, those at risk of being trafficked or otherwise exploited, and their employers or workplaces. In this regard, the State media has contributed to raising awareness, mainly focusing on trafficking for sexual exploitation. Similarly, the José Martí International Institute of Journalism held a seminar/workshop on the treatment of gender-based violence, particularly on trafficking in persons and how it is covered in the media. Finally, the publication of the Government's periodic reports is a tool to keep the public updated on the efforts undertaken by the Government to prevent trafficking, protect trafficked persons and prosecute perpetrators on the basis of legal, institutional and policy frameworks and partnerships.

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[49] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las víctimas" (2017), p. 15.

[50] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015 and 2013).

[51] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015), p. 14.

[52] Ministry of Foreign Affairs, "Informe de Cuba sobre la prevención y enfrentamiento a la trata de personas y la protección a las víctimas" (2017), p. 17.

[53] Meeting with the Minister of Tourism, Manuel Marrero Cruz, April 2017.

[54] Ministry of Foreign Affairs, "Cuba's report on legal and punitive actions against trafficking in persons and other forms related to sexual exploitation or abuse" (2015).

76. The Special Rapporteur acknowledges the Government's numerous awareness-raising efforts and training programmes to increase the knowledge and skills to detect risks of trafficking in persons and to prevent it. However, the overall limited understanding of the phenomenon of trafficking, which is wrongly perceived as a crime committed by criminals operating exclusively in the context of sexual exploitation of women and children, is further impacted by the absence of baseline research on manifestations of trafficking in all its forms, as well as gaps in the legal and policy framework. The potential of government institutions to raise awareness about trafficking in persons and proactively take measures to discourage it does not seem to be fully exploited, as the institutions themselves remain in need of further capacity-building. In addition, front-line officials, civil society organizations and the general population remain largely unaware of government actions to combat and prevent all forms of trafficking in persons.

I. Cooperation and partnership

1. Cooperation with civil society

77. The Special Rapporteur acknowledges the role played by some civil society organizations during the discussion and validation process of the National Action Plan. In terms of cooperation between the Government and civil society organizations, the National Action Plan envisages increased capacity and participation of civil society organizations in the areas of prevention of trafficking and protection and reintegration of trafficked persons.

78. However, in her meeting with civil society organizations in Havana, the Special Rapporteur noted that the will of some such organizations to combat trafficking is hampered by their varying degree of understanding of the crime of trafficking and a lack of adequate resources.

2. International, regional and bilateral cooperation

79. The transnational and multidimensional nature of trafficking requires the participation of source, transit and destination countries in anti-trafficking work, whether in the area of identification of victims, exchange of information, joint investigations or judicial cooperation.

80. Cuba collaborates with Canada, Ecuador, France, Italy, Spain and the United States of America, among others, in the area of criminal investigations, judicial assistance and exchanges of information.[55] Furthermore, it cooperates and exchanges information with INTERPOL on foreign citizens suspected of sex crimes against children, including child sex trafficking. Cuba is also part of the Ibero-American Network of International Judicial Cooperation.

81. Through nine bilateral cooperation agreements and memorandums of understanding, with Angola, Belarus, the Plurinational State of Bolivia, Brazil, China, Ecuador, Mozambique, the Russian Federation and Viet Nam, the Prosecutor General's Office of Cuba strengthens the capacity of its members through training.[56]

82. Cuba also has agreements with the Bahamas, the Dominican Republic, Ecuador, Guatemala, Jamaica, Mexico, Panama and the United States, as well as with the Cayman Islands, on migration, and another is under way with Honduras to ensure reception, medical treatment and reintegration of migrants intercepted at sea or in irregular transit, and identification of victims and potential victims of trafficking among other groups requiring protection.

83. The Special Rapporteur learned that Cuba intended to continue promoting international, regional and national cooperation and exchanging experiences and practices, mainly through South-South cooperation, and to implement a comprehensive, coordinated

[55] Ibid.
[56] Ibid.

and systematic response to prevent and combat trafficking as reflected in the National Action Plan.[57]

84. Cuba has benefited from some assistance from the International Organization for Migration and the United Nations Office on Drugs and Crime in developing the National Action Plan, reviewing existing laws, and facilitating workshops and sensitization activities on trafficking in persons.

III. Conclusions and recommendations

A. Conclusions

85. Available data indicate that Cuba is a source country and to some extent a transit country for trafficking in persons. Victims of internal trafficking in Cuba are women, girls and boys who are subjected to trafficking for sexual exploitation by family members or close relatives. Regarding trafficking of Cubans citizens to countries abroad, girls and women are trafficked for labour and sexual exploitation through deceptive promises of employment in the entertainment industry abroad, that subsequently turn into forced prostitution. Cuba also faces challenges as a transit country, for possible trafficking in persons from among African and Asian migrants en route to the United States of Amserica.

86. The Special Rapporteur commends the political will of Cuba to address trafficking in persons, as reflected in the ratification of international instruments to combat trafficking in persons and in its focus on raising awareness as a means of preventing trafficking. The country's free and universal education and health-care systems, and the attention paid by social services, reduce vulnerabilities to trafficking.

87. However, the efforts to prevent and combat trafficking in persons are at an initial stage. The recently established National Action Plan for preventing and combating trafficking in persons and for the protection of victims (for 2017–2020) is a good start, as is the soon-to-be-established interministerial body for coordination of matters pertaining to trafficking. Moreover, victims of trafficking can, in principle, receive remedies, including compensation via the indemnity fund for victims of crimes.

88. Notwithstanding these positive steps, trafficking in persons, especially women and children, is unfortunately not comprehensively addressed in the legal framework. The crimes of procuring and trafficking are conflated in the penal code; trafficking in all its forms is neither defined nor recognized as envisaged in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and protection of children against sexually motivated crimes is only provided until the age of 16.

89. The lack of a clear legal definition of trafficking in national legislation hampers a correct perception of the real features of trafficking, among government officials and civil society organizations. As a consequence, there is no awareness about the distinction between trafficking and procuring, and the specificities of trafficking as opposed to sexual violence and abuse. Moreover, trafficking is still perceived as being related to sexual exploitation, while the labour dimension is overlooked.

90. As a result, identified cases of trafficking are limited to trafficking for sexual exploitation, mainly relating to child prostitution, sexual abuse of minors, and forced prostitution of women by family members or partners. In some cases, these may amount to trafficking but are not recognized as such. In addition, with the recent and positive changes which allow for self-employment and development of small business in some sectors, labour exploitation amounting to trafficking may arise, particularly

[57] National Action Plan, p. 7 and p. 9.

in the tourist industry which is affected globally by both labour exploitation and sexual exploitation. There is thus a need for an active search to identify such potential new and emerging forms of exploitation.

91. Moreover, the capacity gap on the part of front-line officers in terms of ability to quickly and accurately identify cases of trafficking and cases involving potential trafficking, and the absence of standard identification tools and protocols, is a challenge, despite the Government's ongoing efforts to address it. As a consequence — and also in view of the limits of the existing anti-trafficking law — the capacity of law enforcement agencies, judicial authorities and labour inspectors, as well as the prosecution rate and punishment rate for all forms and manifestations of trafficking in persons, remain very low.

92. The Special Rapporteur is also highly concerned that although prostitution is not a crime per se, individuals who engage in prostitution/sex work, including children between the ages of 16 and 18 years, and including possible trafficking victims, are often detained in "rehabilitation centres", which constitutes a violation of their rights.

93. Other challenges relate to coordination between the authorities concerned and service providers, as a result of the lack of an interinstitutional mechanism to combat trafficking; and to the lack of a comprehensive package of services available to all victims of trafficking. Moreover, the dearth of available data on trafficking in persons inhibits understanding of the exact scope and magnitude of trafficking in persons, especially of women and children, in the country. The inadequate legal and institutional protection framework for victims of trafficking reinforces the invisibility of the problem, and thus the extent, trends and manifestations thereof are unknown.

F. Recommendations

94. On the basis of the above findings, and in a spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations that could also contribute to the effective implementation of the National Action Plan for preventing and combating trafficking in persons and for the protection of victims, for 2017–2020:

95. With regard to the international, regional and bilateral frameworks:

(a) Ratify without delay the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention relating to the Status of Refugees, of 1951, and its 1967 Protocol, and the Protocol of 2014 to the International Labour Organization Forced Labour Convention, 1930 (No. 29);

(b) Establish and, where already in existence, implement bilateral and multilateral agreements for the exchange of information, mutual legal assistance and safe returns, in order to jointly tackle the root causes of trafficking in persons;

(c) Continue working with source countries to ensure prevention and awareness-raising.

96. With regard to the national framework:

(a) Revise and implement the anti-trafficking legal framework to include the three elements of trafficking — the act, the means and the purposes, as per article 3 of the Trafficking in Persons Protocol. This is needed to accurately identify, protect and assist victims of trafficking in persons, especially women and children, to investigate and prosecute traffickers and to better prevent trafficking in Cuba;

(b) Implement the National Action Plan (2017–2020) and measure the progress and the impact on anti-trafficking initiatives;

(c) Accelerate the establishment of the interinstitutional national anti-trafficking body, as envisaged in the National Action Plan, as the lead agency to combat and prevent trafficking in persons. Ensure that this body is endowed with the

responsibility to coordinate, implement, monitor and evaluate activities and initiatives aimed at combating all types of human trafficking;

(d) Carry out a national baseline study, in collaboration with research institutes, bilateral partners and civil society, to document the scope and trends of trafficking at the national level. Ensure that the study addresses all forms of human trafficking, its causes and its consequences, particularly trafficking involving labour exploitation and sexual exploitation of Cubans, migrants, refugees and asylum seekers;

(e) Establish a systematized and harmonized data collection system, which should include the victims' sex and age and the nature and type of trafficking involved. The system should also include information on traffickers and data on investigations, prosecution rates and sentencing. Such data is vital to the development of informed policy responses to address trafficking in persons.

97. **With regard to identification, training and capacity-building:**

(a) Urgently establish standard operating procedures for the identification of all forms of trafficking and for referral of victims, defining indicators to look out for while screening vulnerable persons, including Cubans and undocumented migrants. It is pertinent to note that the accurate and swift identification of victims of trafficking is crucial to activating other actions, such as investigation and prosecution of traffickers, as well as referrals that would allow for adequate assistance and protection of victims;

(b) Establish appropriate tools and indicators to enable labour inspectors to identify victims of trafficking during labour checks, as well as immediate protection measures for victims of forced labour;

(c) Continue to provide comprehensive training programmes on trafficking in persons in order to enhance the knowledge and awareness of all stakeholders, including police, immigration, customs and maritime officers, labour inspectors, prosecutors, judges, lawyers, employers, employment agencies, civil society organizations and the media;

(d) Ensure continued training for law enforcement officials and government authorities, to enhance their capacity to identify trafficked persons promptly and accurately and to make referrals to appropriate services. Additionally, train all stakeholders involved in providing assistance and care to victims of trafficking;

(e) Continue to provide training for criminal justice officials, including prosecutors and judges, to raise awareness about emerging trends regarding trafficking in persons, and to ensure a human rights-based and victim-centred approach to prosecution of criminals, and protection of victims;

(f) Ensure that medical personnel undertaking missions abroad are trained to detect trafficking situations, including in conflict and humanitarian crisis settings, which are prone to trafficking.

98. **With regard to support services for victims of trafficking:**

(a) Protect and assist all victims of trafficking, including adult and child victims of labour trafficking and sexual exploitation, with full respect for their human rights;

(b) Make provision for unconditional and appropriate assistance, including social, psychological, medical and legal support, as well as translation assistance and interpretation services for trafficked persons, in accordance with article 6 (6) of the Trafficking in Persons Protocol;

(c) Ensure that victims of trafficking are not detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons. Abolish,

without delay, the practice of detaining those engaged in prostitution/sex work, among whom there may also be potential victims of trafficking, in "rehabilitation centres";

(d) Provide, together with civil society organizations, shelters for victims of trafficking in persons, for men, women and children, and provide them with comprehensive assistance, such as social, psychological, medical and legal support, as well as translation and interpretation services. Ensure that victims living in shelters have freedom of movement and access to employment and are given residence in the country;

(e) Develop protocols and/or guidelines for the identification of trafficking and exploitation, defining red flags and indicators to look for while screening vulnerable persons, and adequately train staff on their use. Develop another guideline specifically for the reintegration of Cuban victims of trafficking upon their return from abroad;

(f) Ensure that appropriate tools and indicators enable labour inspectors to identify victims of trafficking during labour checks, and that there are immediate protection measures for people found to be in situations of exploitation which may amount to trafficking and forced labour;

(g) Ensure that the hotline of the Attorney General's Office is serviced by multilingual staff who have received specialized training about trafficking in persons;

(h) Provide victims of trafficking who do not wish to return to their countries of origin, owing to fear of retribution, hardship or retrafficking, with viable alternatives to remain and work legally in Cuba, including through the granting of special residence and work permits;

(i) Further develop cooperation between relevant government institutions, civil society organizations and relevant United Nations agencies and programmes to provide support and assistance to victims of trafficking.

99. **With regard to prosecution:**

(a) Increase efforts to prosecute traffickers while guaranteeing fair trial rights consistent with a human rights-based approach to criminal justice, and establish the necessary legal framework and procedures in order to ensure that victims of trafficking and witnesses are adequately protected;

(b) Continue to ensure that the best interests of the child are at the heart of the criminal justice response in cases involving children;

(c) Strengthen the capacity of judicial officials to prosecute trafficking cases.

100. **With regard to prevention:**

(a) Step up efforts to raise awareness about all forms of trafficking in persons, including for labour exploitation, sexual exploitation, and the removal of organs;

(b) Take urgent action to launch widespread awareness-raising campaigns using the media, information and communications technology, and other channels of communication, so as to send a strong message and bring about a deeper understanding of all forms of trafficking in persons in order to promote understanding of what constitutes trafficking, among the general population and the foreign community in Cuba;

(c) Given the gradual opening of the labour market, particularly in the tourism sector, focus on raising awareness and addressing new and emerging forms of trafficking linked with tourism, such as trafficking for the purpose of sexual exploitation of children, and labour exploitation of foreign workers in the construction of tourist infrastructures.